

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANTONIO GALLEGOS, KRISTIAN PETTINE,
ANDRE GALLEGOS, and K.L.P.L., a
minor child,

Plaintiffs,

vs.

No. 1:12-CV-224-LH/KBM

CITY OF ESPAÑOLA, a municipal corporation,
JOE MARTINEZ, individually and in his official capacity;
JEREMY APODACA, individually and in his official
capacity; ROBERT VIGIL, individually and in his official
capacity; CITY OF ESPAÑOLA OFFICERS and SUPERVISORS JOHN
DOES 1 through, individually and in their official
capacities,

Defendants.

DEPOSITION OF ANTONIO GALLEGOS

Friday, June 21, 2013

9:03 a.m.

Cumbre Court Reporting, Inc.

2019 Galisteo Street

Santa Fe, New Mexico 87505

PURSUANT TO THE NEW MEXICO RULES OF CIVIL
PROCEDURE, this Deposition was:

TAKEN BY: MARK A. BASHAM
ATTORNEY FOR THE DEFENDANTS

REPORTED BY: ALLISON ASH-HOYMAN
NEW MEXICO CCR #18
CUMBRE COURT REPORTING, INC.
2019 Galisteo, Suite A-1
Santa Fe, New Mexico 87505

Allison Ash-Hoyman, CCR 18

Exhibit B

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1 Q. Okay. And did you stop anywhere on the way up
2 to Española?
3 A. No.
4 Q. You went straight to work?
5 A. Yes.
6 Q. And do you know about what time you got there?
7 A. No.
8 Q. Okay. Then what happened?
9 A. And then I started cleaning, cleaning my
10 lobby, my office, just getting it ready for the day.
11 Q. Okay. Did anyone stop by and visit you?
12 A. Yes. Not to visit me. To visit my wife.
13 Q. Okay. Do you know who they are?
14 A. I know two of the guys, Alfonzo Gurule and
15 Steven Marquez. And I didn't know the other guy.
16 Q. When is the last time you had contact with
17 Alfonzo Gurule?
18 A. Geez, I haven't seen Alfonzo Gurule in over a
19 year, probably.
20 Q. Okay. And when is the last time you saw
21 Steven Marquez?
22 A. Steven Marquez, last month.
23 Q. Okay. Then what happened?
24 A. Then I proceeded to clean, clean up my stuff
25 there. I was -- I was walking down the hallway and I --

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1 and I just happened to glance out my glass -- my glass
2 door in the front and I saw a police car pull up.
3 Q. Okay. Let's step back a bit.
4 These people that stopped to visit you, had
5 they been drinking?
6 A. They had.
7 Q. Had they been drinking a lot?
8 A. It appeared that they did.
9 Q. Okay. So you saw a policeman, a unit pull
10 into your driveway?
11 A. Yes.
12 Q. I just want to show you this (indicating).
13 Do you recognize that place?
14 A. That's my office.
15 Q. Okay. And there is a truck there, and do you
16 recognize that person sitting on the truck?
17 A. That's Alfonzo Gurule.
18 Q. Okay, what's that to your right on that
19 picture?
20 A. Here (indicating)?
21 Q. Uh-huh.
22 A. That's a police car.
23 Q. So does this kind of reflect that setup?
24 A. Yes.
25 Q. Let me get a pen for him.

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1 Do you have pen for him?
2 MR. THOMPkins: (Handing pen to witness.)
3 MR. BASHAM: Let's go ahead and mark that
4 diagram Exhibit A to Alfonzo's [sic] deposition.
5 (Marked Deposition Exhibit A.)
6 BY MR. BASHAM:
7 Q. So do you know approximately what time the
8 police car showed up?
9 A. I don't.
10 Q. Do you know why the police car showed up?
11 A. No.
12 Q. Today you don't know, or at that point in time
13 you didn't know?
14 A. At that point in time I didn't know.
15 Q. Okay. In your complaint it states that
16 Officer Jeremy Apodaca, once he arrived on the scene,
17 made a verbal contact with Alfonzo Gurule, who allegedly
18 stated that someone had pulled a gun on him and told him
19 you faggots don't belong here.
20 Were you aware of that at that point in time?
21 A. No.
22 Q. Did you ever become aware of that at any point
23 in time?
24 A. No.
25 Q. Did you know that Officer Apodaca's presence

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1 was as a result of a call to 911?
2 A. Did I know that?
3 Q. Uh-huh.
4 A. When?
5 Q. At the time that he pulled up.
6 A. No.
7 Q. Did you subsequently find out why he was
8 there?
9 A. Yes.
10 Q. So at that point in time you found out he was
11 there as a result of a 911 call; correct?
12 MR. THOMPkins: Excuse me. Objection as to
13 what point in time.
14 If you understand what he is asking, you can
15 go ahead and answer the question.
16 A. I don't understand. What are you asking?
17 BY MR. BASHAM:
18 Q. Tell me this: At what point in time did you
19 realize he was there as a result of a 911 call?
20 A. I -- I was talking to Officer Vigil and he
21 told me that he was there on a 911 call.
22 Q. Did he tell you it involved a gun?
23 A. Yes.
24 Q. Okay. So you agreed the officers were there
25 to investigate a 911 call; correct?

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1 **MR. THOMPCKINS:** Objection as to form of the
2 question.
3 A. I don't understand.
4 **BY MR. BASHAM:**
5 Q. So you agree that the officers were there as a
6 result of a -- were there to investigate a 911 call
7 involving a gun; correct?
8 **MR. THOMPCKINS:** Objection as to the form of
9 the question.
10 A. I don't understand the question.
11 **BY MR. BASHAM:**
12 Q. So they came to your -- do you agree that the
13 officers came to your place of business because they
14 were responding to a 911 call involving a gun?
15 **MR. THOMPCKINS:** Objection as to form of the
16 question.
17 A. I don't understand.
18 **BY MR. BASHAM:**
19 Q. You tell me why were the officers there.
20 A. Why did they say they were there?
21 Q. Sure.
22 A. They said that they were there because they
23 got a call that somebody had a gun.
24 Q. And would you agree that they were
25 investigating that call?

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1 **MR. THOMPCKINS:** Objection as to form of the
2 question.
3 A. Say it again.
4 **BY MR. BASHAM:**
5 Q. Do you agree that they were there
6 investigating that 911 call?
7 **MR. THOMPCKINS:** Same objection.
8 You can answer it.
9 **THE WITNESS:** I can answer?
10 **MR. THOMPCKINS:** If you understand what he is
11 asking you, yes.
12 A. They said that they were there because they
13 got a call somebody had a gun.
14 **BY MR. BASHAM:**
15 Q. And I'm asking you, would you agree that they
16 were investigating that call?
17 **MR. THOMPCKINS:** Objection as to the form of
18 the question.
19 A. That's what they told me.
20 **BY MR. BASHAM:**
21 Q. I'm asking you.
22 A. I don't know. I don't know what they were
23 there for.
24 Q. Okay. You said you saw them in the hallway,
25 the police unit, and you were in the hall in your

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1 business; correct?
2 A. At what time?
3 Q. When the officer first showed up.
4 A. I was walking through my office when the
5 officer first walked up. First drove up.
6 Q. Okay. Then what did you do?
7 A. I waited, looking out the window, because we
8 get police officers, we get firemen, we get different
9 customers come in in their different vehicles, and I was
10 waiting for him to get down. But he never got down.
11 Q. What do you mean by "got down"?
12 A. Got off his vehicle.
13 Q. Okay.
14 A. So then I went outside to ask him if I could
15 help him. I thought he was a customer.
16 Q. Okay. So when you approached him he was still
17 in the vehicle?
18 A. Yes.
19 Q. This is Officer Apodaca?
20 A. No. Vigil. Officer Vigil.
21 Q. Okay. At that point in time how many cop cars
22 were there?
23 A. At the point that I walked out it was only
24 Officer Vigil's car.
25 Q. So you are saying Officer Vigil was the first

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1 one on the scene?
2 **MR. THOMPCKINS:** Objection as to form of the
3 question.
4 A. He is the one that I went to go talk to.
5 **BY MR. BASHAM:**
6 Q. Okay. Did you ever talk to --
7 A. That is the vehicle that I saw pull up right
8 in front of the office.
9 Q. Okay. Was there another cop car there at that
10 point in time?
11 A. I don't recall. I was just paying attention
12 to Officer Vigil.
13 Q. Okay. Where was Kristian at this point in
14 time?
15 A. She was in the office.
16 Q. Okay. What did you tell Officer Vigil?
17 A. I asked him if I could help him.
18 Q. And you are saying he was still in his vehicle
19 at that point in time?
20 A. Either in his vehicle or just got out of his
21 vehicle at that point.
22 Q. Okay. And so you asked him if you could help
23 him. What was his response?
24 A. He told me that he was there on a 911 call.
25 He told me that somebody called in, that somebody had

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1 pulled a gun on somebody else.
 2 Q. Okay. Go ahead.
 3 A. And I didn't know anything he was talking
 4 about.
 5 Q. Okay. And was that the end of your
 6 conversation?
 7 A. No.
 8 Q. Okay. What else was said?
 9 A. I told him I didn't -- I didn't know that
 10 anyone had called in that somebody pulled a gun, I
 11 didn't know anything about it.
 12 Q. Okay. On Exhibit A would you go ahead and
 13 mark where this conversation took place?
 14 A. I would say right in here (indicating).
 15 Q. Okay. Put down a V for Vigil.
 16 A. I'm --
 17 Q. Pardon me?
 18 A. I'm not sure which side of the car we were on
 19 when we were talking, somewhere around the car here.
 20 Q. Okay. Well, put down a V for Vigil.
 21 MR. THOMPCKINS: Objection as to marking a V
 22 for Vigil. He just indicated he didn't know where it
 23 was located, so that misrepresents his testimony.
 24 BY MR. BASHAM:
 25 Q. Where were you located, put down AG for where

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1 you were located.
 2 A. I was located right around the police car
 3 somewhere.
 4 Q. Okay, go ahead and put down AG.
 5 MR. THOMPCKINS: Again I raise the same
 6 objection as to one point that he testified it was an
 7 area, not a specific point.
 8 BY MR. BASHAM:
 9 Q. So that's the area you were in, correct, where
 10 you just marked?
 11 A. Right. Right in front of the building
 12 somewhere there.
 13 Q. Okay. Did you have any other conversation
 14 with him?
 15 A. Yes.
 16 Q. Tell us about it.
 17 A. The conversation I had with him? I -- I told
 18 him that I didn't know of any phone call or any gun or
 19 anything that he was talking about.
 20 Q. Okay. Was there another officer there as well
 21 that you remember?
 22 A. Uhm, I believe Officer Apodaca was there.
 23 Q. Can you mark down where you think Officer
 24 Apodaca was?
 25 A. He was somewhere in the front, I'm not sure.

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1 Q. And where was --
 2 A. In the front of the office, I'm not sure where
 3 he was parked.
 4 Q. Okay. What about Kristian, where was she?
 5 A. She was in the office.
 6 Q. At this point in time she was still in the
 7 office?
 8 A. Yeah.
 9 Q. Okay. And then what happened?
 10 A. And then -- and then I asked Alfonzo Gurule if
 11 he knew anything that the police were talking about.
 12 Q. Where was Alfonzo at this point in time?
 13 A. He was in the front, somewhere by the truck,
 14 somewhere over here.
 15 Q. Go ahead and mark that, put down a G for
 16 Gurule.
 17 MR. THOMPCKINS: Again, same objection, he just
 18 indicated a general area.
 19 BY MR. BASHAM:
 20 Q. Go ahead and do it.
 21 MR. THOMPCKINS: If you know a specific area,
 22 then you can mark it.
 23 BY MR. BASHAM:
 24 Q. Even a general area, mark down the general
 25 area.

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1 A. (Witness complying.)
 2 Q. Put a G.
 3 A. (Witness complying.)
 4 Q. Let me ask you this: Do you have a clear
 5 recollection of the events that happened that day?
 6 A. Yes.
 7 Q. Okay. But you can't tell me where Alfonzo was
 8 at this point in time?
 9 A. No.
 10 Q. Okay. So you have marked yourself in front of
 11 the -- of the police unit, and as far as Alfonzo, you've
 12 marked it on the right-hand side of the red -- at the
 13 left-hand side of the red pickup truck.
 14 MR. THOMPCKINS: Objection as to form, and
 15 objection as to it mischaracterizes his testimony as to
 16 where he was.
 17 BY MR. BASHAM:
 18 Q. So how were you able to talk to him?
 19 A. He was close enough to talk to him.
 20 Q. Okay. So we have AG over here, and a G way
 21 over there. Were you yelling at him?
 22 A. No. No, that's -- that's -- the whole front
 23 of my office is probably only 60 feet long. I could be
 24 -- I could be on this side and be talking to you on this
 25 side (indicating).

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1 Q. Without raising your voice?
2 A. Yeah.
3 Q. Okay. So tell us about your conversation with
4 Alfonzo.
5 A. I asked him if he knew anything about what the
6 police were asking.
7 Q. And what was his response?
8 A. I asked -- he said that him and my older son
9 had some words. And I said, do you know anything about
10 a gun? Did you see a gun? And he said no, I don't
11 know.
12 Q. That's what Alfonzo said?
13 A. Yes.
14 Q. Okay. Then what happened?
15 A. And then I talked to Officer Vigil and told
16 him well, obviously there is not anything going on here.
17 Somebody made a call saying there was a gun and now he
18 is saying no, and he doesn't know.
19 Q. Now you would agree at this point in time you
20 told Officer Vigil that the only guns here are the ones
21 in the house; correct?
22 MR. THOMPCKINS: Objection as to the form of
23 the question.
24 A. No.
25 BY MR. BASHAM:

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1 Q. What did you say about the guns?
2 MR. THOMPCKINS: Objection as to form.
3 A. I didn't.
4 MR. THOMPCKINS: Hold on. Objection as to the
5 form of the question.
6 Go ahead.
7 THE WITNESS: Repeat the question for me.
8 BY MR. BASHAM:
9 Q. What did you say about the guns?
10 MR. THOMPCKINS: Same objection.
11 A. What guns?
12 BY MR. BASHAM:
13 Q. Did you have guns in the house/business,
14 whatever it is?
15 A. Was there a gun in the house?
16 Q. Or guns.
17 A. There was a gun in the house, I believe.
18 Q. Okay. What type of gun was it?
19 A. A .22 rifle.
20 Q. How many guns do you possess? Firearms that
21 is. So that includes rifles.
22 A. I don't know. A handful.
23 Q. Okay. Can you tell us what they are?
24 A. Uhm, what do I own. I have a .270 rifle; I
25 have 7 millimeter rifle; I have -- I have a 12 gauge

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1 shotgun, a .22 rifle. I believe that's it.
2 Q. So you don't own any handguns?
3 A. Handguns? I have a -- I have a .500 Smith &
4 Wesson Magnum.
5 Q. Okay. Is that it?
6 A. I believe so.
7 Q. But you don't know for sure?
8 A. I've given some -- I've given some of my
9 rifles and guns to my sons.
10 Q. Okay. At the time you were talking to Alfonzo
11 Gurule, where was Kristian?
12 A. Kristian was in the office.
13 Q. Okay. Well, in your complaint it says that
14 Officer Apodaca became aggressive and focusing his
15 attention on Kristian Pettine.
16 Can you define what you mean by "aggressive"?
17 A. Can you repeat the question?
18 Q. In the complaint that you have filed, it
19 alleges that Officer Apodaca became aggressive and
20 focusing his attention on Kristian, and I asked you can
21 you describe what you mean by "aggressive"?
22 MR. THOMPCKINS: I'm going to object to the
23 form of the question as the complaint is filed by more
24 than Mr. Gurule -- I'm sorry, Mr. Gallegos. So I'm
25 objecting to the characterization in the question that

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1 he is the only one that filed the complaint and he is
2 the only one that has information.
3 BY MR. BASHAM:
4 Q. Go ahead and answer.
5 A. I don't understand your question.
6 Q. Can you describe what you mean by aggressive?
7 A. I still don't understand what -- I don't
8 understand what you are talking about.
9 Q. In your complaint you allege that Officer
10 Apodaca became aggressive and focusing his attention on
11 Kristian.
12 MR. THOMPCKINS: Objection as to the form of
13 the question.
14 BY MR. BASHAM:
15 Q. Can you describe what you mean by
16 "aggressive"?
17 MR. THOMPCKINS: Same objection.
18 A. I don't understand the question.
19 BY MR. BASHAM:
20 Q. What part don't you understand?
21 A. The whole thing. The whole thing I don't
22 understand.
23 Q. Well, can you explain what you mean by
24 "focusing his attention on Kristian"?
25 MR. THOMPCKINS: Same objection as to the form

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1 that the call wasn't correct because the guy that made
2 the call now was saying he doesn't know if he saw a gun.
3 So there is nothing here, there is no reason for you to
4 stay here. He was the only one outside. There is
5 nothing here.
6 I said, I'm here to work, I have to take care
7 of my business, and I would appreciate if you guys just
8 left.
9 Q. And what did he say?
10 A. That's when he got combative. He raised his
11 voice to me, kind of got in my face a little bit and
12 told me no, we are not -- we are not going anywhere.
13 Q. Okay.
14 A. Kind of yelled at me.
15 Q. And then what happened?
16 A. And then I said well, there is nothing here.
17 I don't -- I didn't see nothing, nobody here saw
18 anything, the only one that saw anything was outside at
19 the time was Alfonzo Gurule, he says he doesn't know
20 what he saw.
21 Q. Where was Andre at this point in time?
22 A. In the office.
23 Q. Okay. And then what happened next?
24 A. And then Officer Vigil and Officer Apodaca
25 started talking to each other.

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1 Q. Okay. Did you overhear what they were saying?
2 A. No.
3 Q. Okay. I thought earlier you testified that
4 you could hear someone or talk to someone from one side
5 of the building to the other; correct?
6 A. Well, they were talking kind of low to each
7 other.
8 Q. Okay. Were you trying to listen to what they
9 were saying?
10 A. I was.
11 Q. But you didn't hear anything?
12 A. I didn't.
13 Q. Did you hear bits and pieces?
14 A. No.
15 Q. Okay. What did you do next?
16 A. Next -- what happened next.
17 They were talking, and I started to walk
18 towards my office. I was going to go back to work.
19 Q. Did you tell them anything, the officers that
20 is, other than that you were going to go back to work?
21 A. I told them I don't know anything, I didn't
22 see anything, I'm going back to work.
23 Q. Did you tell them, you know, did you tell them
24 to get out of here, that you know Judge Naranjo?
25 A. No.

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1 Q. You never said that?
2 A. No.
3 Q. So then what happened next?
4 A. So then I started up the stairs to my office.
5 And Officer Vigil ran up, he ran up behind me, said
6 stop, stop, you can't -- you can't -- he told me to
7 stop, and I was already walking up my stairs. So I
8 stopped at the top of the stairs and he grabbed my arm
9 and he cuffed my arm.
10 And then as he was going to get this other arm
11 he grabbed my head and started to force my head into the
12 wall, towards the wall. And then Officer Apodaca ran up
13 at the same time and tased me in the neck.
14 Q. Okay. So is it your testimony that at no
15 point in time did you push Officer Vigil?
16 A. No, I didn't.
17 Q. Okay. So you deny pushing Officer Vigil?
18 A. I did not.
19 MR. THOMPCKINS: Objection. Asked and
20 answered.
21 Give me a moment to raise an objection before
22 you answer the question.
23 THE WITNESS: Okay.
24 BY MR. BASHAM:
25 Q. Okay. How many times were you tased?

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1 MR. THOMPCKINS: You can answer.
2 A. Three.
3 BY MR. BASHAM:
4 Q. Okay. Did you take photos of the injury?
5 A. Yes.
6 MR. BASHAM: Nate, those have not been
7 provided to us.
8 MR. THOMPCKINS: I'm sorry?
9 MR. BASHAM: Those photos have not been
10 provided to us.
11 MR. THOMPCKINS: Yes, they have. They are in
12 the discovery. You even listed them in there.
13 MR. BASHAM: Photos of his injuries.
14 MR. THOMPCKINS: Yes.
15 MR. BASHAM: I'll confirm that. I looked for
16 them yesterday.
17 Q. So then what happened next?
18 A. So then me and Officer Vigil, we kind of -- we
19 kind of fell towards the front steps, and as we did that
20 then Officer Apodaca tased me here on the side.
21 Q. Okay. Once in the neck and once on the
22 left-hand side?
23 A. Yes.
24 Q. Okay. And then what happened?
25 A. And then I fell to the -- I fell to the cement